IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

CRP.No. 883 of 2004(G)

AGAINST THE ORDER DATED 18/03/2004 IN EP 678/82 IN OS.141/1965 of PRL.MUNSIFF COURT, CHERTHALA

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REVN. PETITIONER: DEFENDANTS 1,3 AND 4:

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1. KUNJU PILLAI BHASKARA PILLAI, CHITTAYIL PINOORVEETTIL, PANAVALLI MURI, PANAVALLY VILLAGE.

2. BHARGAVI AMMA SARADAMMA, CHITTAYIL PAINOORVEETTIL, PANAVALLI MURI, PANAVALLY VILLAGE.

3. BHARGAVI AMMA INDIRAMMA, CHITTAYIL PAINOORVEETTIL, PANAVALLI MURI, PANAVALLY VILLAGE.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI
SMT.A.S.BEENU
SRI.BRIJESH MOHAN
SRI.M.V.BIPIN
SMT.C.BEENA

RESPONDENTS: PLANITIFFS 4 TO 8:

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1. NARAYANAN SUSEELA KAIMAL, MULLAKKAILAYA, KALAPPURACKAL, PANAVALLY MURI, PANAVALLY VILLAGE.

2. NARAYANAN SIVASANKARA KAIMAL, MULLAKKARILAYA, KALAPPURACKAL, PANAVALLY MURI, PANAVALLY VILLAGE.

3. NARAYANAN SARNGADHARA KAIMAL, MULLAKKARILAYA, KALAPPURACKAL, PANAVALLY MURI, PANAVALLY VILLAGE.

4. NARAYANAN MANMADHAN KAIMAL,
MULLAKKARILAYA, KALAPPURACKAL, PANAVALLY MURI,
PANAVALLY VILLAGE.

5. NANGU KUNJAMMA RUGMINI KUNJAMMA,
MULLAKKARILAYA, KALAPPURACKAL, PANAVALLY MURI,
PANAVALLY VILLAGE.

6. NANGU KUNJAMMA GOWRIKUTTY KUNJAMMA,
MULLAKKARILAYA, KALAPPURACKAL, PANAVALLY MURI,
PANAVALLY VILLAGE.

BY ADV. NARAYANAN SUSEELA KAIMAL(PARTY)
NARAYANAN SIVASANKARA KAIMAL(PARTY)
NARAYANAN SARNGADHARA KAIMAL(PARTY)
NARAYANAN MANMADHAN KAIMAL (PARTY)
NANGU KUNJAMMA RUGMINI KUNJAMMA(PARTY)
NANGU KUNJAMMA GOWRIKUTTY KUNJAMMA(PARTY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP No. 883 OF 2004

ORDER IN IA NO. 2113 OF 2004 IN CRP NO. 883 OF 2004

DISMISSED

18.07.2007 SD/- PIUS C. KURIAKOSE, JUDGE.

PIUS C. KURIAKOSE, J.

C.R.P. No. 883 OF 2004

Dated this the 18th day of July, 2007

O R D E R

Under challenge in this Civil Revision Petition is the order passed by the execution court executing the decree passed by this court in second appeal declaring that the boundary of the first plaintiff's property is the boundary line of Survey No.132/11 and that if there is any encroachment by the defendants (revision petitioners) into the property of that survey number in the possession of the first plaintiff the defendants are liable to remove the same. Under the impugned order, over ruling various contentions raised by the judgment debtors the execution court has recorded the delivery effected through the Amin and accordingly closed the execution petition.

2. Advocate Sri.Shaji Thankappan used to appear for the 1st respondent decree holder. He submitted before me that he has relinquished the Vakalath and has handed over the case records to the decree holder with necessary advice to make alternate arrangements for the further conduct of the case. Thereafter, on more than one occasion the CRP was posted before this court showing the names of the respondents. Today also the respondents are absent and there is no representation for them. Sri.Jaju Babu, learned counsel for the

petitioners, judgment debtors, would highlight that execution petition was barred by limitation. It cannot be in dispute that the Article governing is Article 135 of the Limitation Act. The learned Munsiff has also found that apparently the execution petition was barred. But, according to the learned Munsiff, it was too late in the day for the petitioners to raise the plea of limitation in an execution petition which was filed way back in 1982. The learned Munsiff noticed that though the execution proceedings had earlier reached this court in a civil revision petition and that when an order of remand was passed in that CRP the question of limitation was not directed to be considered by this court.

3. Having regard to the first principle relating to law of limitation and the ratio emerging from the judgment of a Full Bench of Orissa High Court in **Rajkishore v. Kangali** **[AIR 1972 Orissa 119]** and the decision of this Court in **Varghese v. Krishna Iyer** [**1963 KLJ 546**], I am of the view that the learned Munsiff is wrong in his view that it is not open to the petitioners to raise plea of limitation at this distance of time. Under Section 3 of the Limitation Act it is obligatory for the Court to reject proceedings which are barred by limitation irrespective of the contentions in that regard from the parties.

4. Therefore, I set aside the impugned order and direct the

learned Munsiff to hear the parties on the question of limitation and take a fresh decision as to whether the execution petition was barred by limitation. It is open to both parties to cite relevant judicial precedents before the learned Munsiff and to raise all available arguments. Learned Munsiff will take fresh decision at his earliest and at any rate within three months of receiving copy of this order.

The Civil Revision Petition is disposed of as above.

PIUS C. KURIAKOSE, JUDGE

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